

IN THE  
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1967

No. 77-1508

**MISSOURI CHURCH OF SCIENTOLOGY,**  
*Appellant.*

STATE TAX COMMISSION OF MISSOURI, J. E. RINEY, DON G. WILLIAMS,  
ROBERT F. LOVE, Commissioners of the State Tax Commission of Mis-  
souri, JOHN M. TRAVERS, Collector of Revenue, City of St. Louis, and  
GLENN J. McBRADY, Assessor, City of St. Louis,  
*Appellees.*

On Appeal from the Supreme Court of Missouri

**APPELLANT'S REPLY BRIEF**

*In Opposition to Appellees' Motion to Dismiss or Affirm*

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IN THE  
**SUPREME COURT OF THE UNITED STATES**

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OCTOBER TERM, 1977

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No. 77-1568

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MISSOURI CHURCH OF SCIENTOLOGY,  
Appellant,

v.

STATE TAX COMMISSION OF MISSOURI, J. E. RINEY, DON G. WILLIAMS,  
ROBERT F. LOVE, Commissioners of the State Tax Commission of Mis-  
souri, JOHN K. TRAVERS, Collector of Revenue, City of St. Louis, and  
GLENN J. McBRADY, Assessor, City of St. Louis,  
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On Appeal from the Supreme Court of Missouri

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**APPELLANT'S REPLY BRIEF**  
**In Opposition to Appellees' Motion to Dismiss or Affirm**

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**The Decision Below Presents a Substantial Federal Question  
and Does Not Rest on an Adequate Non-Federal Basis**

Appellees argue that this Court should dismiss this appeal  
or affirm the judgment below because (1) the appeal fails to  
present a substantial federal question, and (2) the decision below



is based on an adequate non-federal basis. With regard to whether a substantial federal question is presented, appellant rests on its jurisdictional statement which, it believes, amply demonstrates the seriousness of the constitutional question here presented.

Appellees' argument that the decision below rests on an adequate non-federal basis is totally misplaced. The Supreme Court of Missouri held that state law requires proof of a belief in "the Supreme Being" in order for a religion to obtain tax exempt status (Jurisdictional Statement, pp. A-4-A-9), and that Appellant's proof on this point failed (Jurisdictional Statement, pp. A-10-A-12). Appellees argue that failure of proof is a state question and that therefore the decision below adequately rests on this non-federal point.

This argument is fallacious because it misses the whole federal point: It is unconstitutional for a state to require proof of belief in God in order for a religion to obtain tax-exempt status. *Torcaso v. Watkins*, 367 U.S. 488 (1961), and see Appellant's Jurisdictional Statement at pp. 8-10. Whether appellant produced satisfactory evidence (or any evidence for that matter) on the question of its belief in God is irrelevant because Missouri cannot impose a requirement that Appellant produce any such evidence without running afoul of the First Amendment. Hence, the issue of failure of proof in the circumstances of this case is neither a non-federal ground nor is it an adequate non-federal ground.

Moreover, the requirement of a belief in God and the Church's failure to produce satisfactory evidence on that requirement are inextricably intertwined. Even if one assumes the question of proof is a non-federal question, it is not independent of the federal question. "[W]here the non-Federal ground is so interwoven with the other as not to be an independent matter, . . . our jurisdiction is plain." *Enterprise Irrigation Dist. v. Farmers Mu-*

*tual Canal Co.*, 243 U.S. 157, 164 (1917); cf. *Ivanhoe Irrigation Dist. v. McCracken*, 357 U.S. 275, 290 (1958).

Appellees argue that the Church failed to prove compliance with the Missouri statute on tax exemption in all its particulars and not just in its unconstitutional particular. But an examination of the opinion below plainly shows that this is not so. The Supreme Court of Missouri held that the Church failed to meet its burden only on the constitutional requirement of a belief in God. Neither the Court nor the State Tax Commission found, for example, that the Church failed to prove that its property was used "exclusively" for religious purposes, or that its property was used for "worship," or that its property was not used for "profit." In fact, the Supreme Court rejected the trial court opinion that the Church had not met its burden on the exclusivity issue. Instead, the Supreme Court held that the Church failed only in its proof of a belief in God.

Moreover, the only testimony by anyone in this case was that of Reverend Rock and his testimony was therefore the only basis upon which the Commission could make 14 Findings of Fact and 10 Conclusions of Law. Hence Reverend Rock's testimony was not rejected in toto. In fact, except for his unequivocal testimony that the Church believes in God, his entire testimony was accepted as fact. It was indeed based on his factual testimony that the Court and the Commission reached the erroneous and unconstitutional conclusion that the Church "appears to be more an applied philosophy which has certain religious connotations, but which falls short of being devoted to the worship of the Supreme Being." (Jurisdictional Statement at page A-32).

Judge Seiler, in his concurring opinion, points out that the Commission found not credible Reverend Rock's testimony "bearing on *the issue*." The only "issue" decided by the Supreme Court or the State Tax Commission was whether the Church believed in God. Moreover, Judge Seiler criticized the opinion

of the Court for deciding that issue by "restrict[ing] the definition [of religion] to conventional orthodox religions" since in the main only such religions require a belief in the Supreme Being. (Jurisdictional Statement at page A-17). It is respectfully submitted that there can be little doubt that the decision below, fairly read, rests solely on the Church's failure to prove its belief in God and that such a basis is neither adequate nor non-federal.

Thus, the Supreme Court of Missouri decided the case on a federal basis, and even if there had been arguably a non-federal ground upon which the Court could have rendered its decision, such as failure to prove exclusive use for religious purposes, still such a possibility would not preclude review here. This Court has held that it will review a case even though the state court, consistently with the record, might have based its decision on an adequate state ground. *Steele v. Louisville Nashville R. Co.*, 323 U.S. 192, 197, note 1 (1944); *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 98 (1938); *International Steel & Iron Co. v. National Surety Co.*, 297 U.S. 657, 666 (1936); *Grayson v. Harris*, 267 U.S. 352, 358 (1925).

Finally, Supreme Court review cannot be avoided by a non-federal ground which is unfounded and arbitrary. It is worth noting that the Commission opinion, which was affirmed by the Missouri Supreme Court, was written over a year after the Commission rendered its decision and almost a year after the Church appealed the Commission decision to the Circuit Court of the City of St. Louis. The Commission opinion on the question of the credibility of Reverend Rock is therefore suspect as "a mere device to prevent a review of the decision upon the federal question." *Enterprise Irrigation Dist. v. Farmers Mutual Canal Co.*, 243 U.S. 157, 164 (1917). In such an instance, review is appropriate.

For all of the reasons stated in Appellant's Jurisdictional Statement and in this brief, it is respectfully submitted that a

substantial federal question is presented, that the question was erroneously decided by the Court below, that the decision below does not rest on an adequate non-federal basis, and that therefore this Court should note probable jurisdiction.

Respectfully submitted,

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